

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN**

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PAUL BURRITT,

Plaintiff,

vs.

LISA DITLEFSEN, and

POLK COUNTY,

Defendants.

12-cv-909-wmc

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**MOTION  
OF PLAINTIFF  
PAUL BURRITT FOR LEAVE TO  
SUPPLEMENT MOTION TO ALTER AND AMEND  
JUDGMENT IN ACCORDANCE WITH FED. R. CIV. P. 59(e)**

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Plaintiff Paul Burritt, through counsel, moves the court, the Hon. William M. Conley, Judge, for leave to supplement his Fed. R. Civ. P. 59(e) motion to alter and amend the 25 February 2014 judgment (Docket #66). Mr. Burritt moves the court in light of *Tolan v. Cotton*, 572 U.S. \_\_\_, 13-551 (U.S. May 5, 2014).

*Tolan* is the case of the near-fatal shooting of Mr. Robert Tolan by Police Sergeant Jeffrey Cotton in 2008. Tolan sued Cotton for unreasonable seizure by infliction of excessive force in violation of U.S. Const. amend. IV and XIV through 42 U.S.C. § 1983. In view of the lower courts' failures to view disputed, material facts at summary judgment in the light most favorable to nonmovant Tolan, the Court vacated and remanded the case for proper application of the clearly established summary judgment standard of *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).<sup>1</sup>

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<sup>1</sup>*Tolan*, 572 U.S. \_\_\_, \_\_\_, 13-551, p. 1 of 13 (U.S. May 5, 2014).

*Tolan* requires the court, per Rule 59(e), to alter and amend its judgment, deny summary judgment to Defendant Ditlefsen,<sup>2</sup> vacate the court's order taxing costs of \$2,438 (Docket #68), and set the case for jury trial.

Plaintiff files and serves the supporting declaration of counsel, which incorporates the decision in *Tolan v. Cotton*, 572 U.S. \_\_\_, 13-551 (U.S. May 5, 2014), his proposed Memorandum of Law, and proposed order.

5 May 2014

Respectfully submitted:

PETER J. NICKITAS LAW OFFICE, LLC

/s/ *Peter J. Nickitas*

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<sup>2</sup>*Tolan* is not a *Monell* case. Mr. Burritt neither adds nor subtracts from his earlier Rule 59(e) arguments in favor of alteration and amendment of the court's judgment in favor of Polk County on his *Monell* claim.